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February 2, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 9, 2009

Case Number: TSO-0819

This Decision considers the eligibility of XXXXXXX XXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."[1] As explained below, it is my decision that the individual's access authorization should not be restored at this time.[2]

I. BACKGROUND

The individual has held a Department of Energy (DOE) security clearance for the last 11 years while working for her present employer, a DOE contractor. In November 2007, she submitted a Questionnaire for National Security Positions (the 2007 QNSP, DOE Ex. 7)) for the purpose of obtaining a higher level access authorization. In February 2008, the individual was hospitalized

[1] Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at http://www.oha.doe.gov . The text of a cited decision may be accessed by entering the case number of the decision in the search engine at http://www.oha.doe.gov/search.htm .

[2] Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

after consuming alcohol to the point of intoxication and deliberately cutting her wrist. The Local Security Office (LSO) conducted a Personnel Security Interview with the individual in May 2008 (the 2008 PSI, DOE Ex. 9). One year later, a DOE-consultant Psychologist evaluated the individual, and diagnosed her with Major Depression Recurrent Moderate. The DOE-consultant Psychologist memorialized his findings in a Report issued in May 2009 (the May 2009 Report, DOE Ex. 10).

In July 2009, the LSO suspended the individual's access authorization. In August 2009, the LSO issued a Notification Letter to the individual, together with a statement setting forth the information that created a substantial doubt about the individual's eligibility to hold a DOE security clearance. (DOE Ex. 3). According to the LSO, the individual's behavior has raised security concerns under 10 C.F.R. § 710.8(h) of the regulations governing eligibility for access to classified material (Criterion H). Specifically, it finds that the individual was diagnosed by the hospital psychiatrist who treated her in February 2008 (the hospital psychiatrist) as having Major Depressive Disorder and Borderline Personality Disorder. These are illnesses or mental conditions that cause, or may cause, a significant defect in the individual's judgment or reliability, raising a security concern under Criterion H. The LSO also finds that the DOE-consultant Psychologist opined in his May 2009 Report that the individual has been a willing participant in the therapy recommended by the professionals who have treated her, but that her therapy has not yet been sufficient to insure her judgment and reliability in the face of any possible increase in stressors. The LSO also finds that the following instances of psychological problems and treatment support the concerns and findings of these medical professionals:

> (1) In 1990, the individual received marital counseling and assistance concerning her military discharge;
> (2) In 2002 or 2003, a general practitioner (hereinafter the individual's doctor) prescribed Zoloft, an anti-depressant, for the individual;
> (3) In October 2007, the individual's doctor diagnosed her as suffering from Depression and prescribed 50 mg of Zoloft for "a chronic condition";
> (4) In February 2008, the individual was hospitalized for slitting her wrists.[3] She later explained to the LSO that she did not want to take her life, but wanted attention and help. She stated that family stressors overwhelmed her, and that she decided to drink herself to sleep, but that she ended up cutting herself for attention;
> (5) In February 2008, after cutting herself, the individual was placed in a hospital on a suicide watch for 48 hours. However, the individual left the hospital Against Medical Advice (AMA) after 24 hours, because she wanted to get back to work and to her children, because she was not comfortable with the hospital psychiatrist, and because she preferred to consult with her doctor; and
> (6) Following her hospitalization, the individual's doctor changed the individual's medication from Zoloft to Zymbalta and Zyprexa, and referred her to counseling

[3] The hospital records submitted by the individual confirm her assertion that she cut only her left wrist. *See* Individual's September 23, 2009 submission.

with a licensed clinical social worker (the individual's counselor), who the individual has consulted on a monthly basis since that time.

DOE Exhibit 3.

On August 24, 2009, the individual requested a hearing (hereinafter "the hearing") to respond to the concerns raised in the Notification Letter. On September 10, 2009, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter in November 2009, I received testimony from eight persons. The DOE presented the testimony of the DOE-consultant Psychologist. The individual, who was represented by counsel, testified and presented the testimony of a psychologist who evaluated the individual for diagnostic purposes (the individual's Evaluating Psychologist). In addition, the individual presented the testimony of her boyfriend, a long-time friend, and a co-worker. The individual submitted several documents prior to the hearing, including records from her February 2008 hospitalization, an August 2009 letter from her general practitioner, a September 2009 letter from her counselor, an October 2009 Psychological Evaluation from her Evaluating Psychologist, and information concerning her prescription medications. Discussion at the hearing centered on the incidents in the individual's life that formed the basis for the LSO's Criterion H concerns, as well as the individual's mental condition and treatment since her February 2008 hospitalization.

II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005 (1995), *aff'd,* Case No. VSA-0005 (1995). *See also* 10 C.F.R. § 710.7(c).

III. ANALYSIS

The individual contests the DOE-consultant Psychologist's finding that she has a mental condition that may cause a significant defect in her judgment and reliability. Her Evaluating Psychologist, her doctor and her counselor support the individual's contention. The individual also testified that her only instance of mental instability, her February 2008 episode and hospitalization, was caused in part by a prescription anti-smoking medication, Chantix, that she began taking in December 2007. She stated that since that incident, she has undertaken extensive counseling, and that she now functions normally without prescription anti-depressant or anxiety medication.

1. The Individual's Mental Health Issues Prior to February 2008

As noted above, the Notification Letter finds that in 1990, the individual received marital counseling and assistance concerning her military discharge. At the hearing, the individual testified that both she and her husband were stationed abroad in the military, and that the marriage ended due to her husband's infidelity while she was expecting their first child. She then made the decision that it would be best for herself and her child to leave the military and return home to her family. She therefore applied for a Chapter 6 hardship discharge based on being a sole parent, which permitted her to receive an honorable discharge from the military. She testified that she received counseling at that time because her military commander told her that counseling was required as part of her Chapter 6 hardship discharge. She stated that she was not prescribed any medication at that time. She submitted a copy of her military discharge papers that verified her account of her discharge. She also submitted portions of the regulations concerning hardship discharges that state that "commanders are required to ensure that adequate guidance and counseling are provided to personnel who apply for dependency or hardship." Hearing Transcript (TR) at 17-18, 47-48 *citing* Individual's Military Discharge papers, and portions of the regulations governing hardship discharges submitted by the individual on September 14, 2009. These records confirm that the individual received sole custody of her child, and that no mental health problems were cited as a cause for her military discharge.

The individual testified that she first used an anti-depressant in 2002, after her younger son was hospitalized in intensive care with a severe concussion. She stated that she asked her doctor for something to help her while her son was in intensive care, and her doctor prescribed Zoloft. She stated that she was not aware at that time that her doctor diagnosed her as suffering from depression when the doctor prescribed her the medication. TR at 24-25, 47-48. The individual testified that she continued to take Zoloft "on and off" until February 2008. She stated that she kept getting her Zoloft prescription refilled because she was coping with a series of traumatic situations in her life. She stated that her son had a slow recovery from his head injury, that her father became ill and died in November 2004, that she went through a divorce in 2005, followed by a home foreclosure in 2007 and that the foreclosure evolved into a personal bankruptcy proceeding in 2008. TR at 44-46, 48-50. In an August 2009 letter, the individual's doctor stated that during this period when the individual was taking Zoloft, she never experienced suicidal or unusual behavior, and was always a reliable and compliant patient. *See* Individual's September 14, 2009, submission. The individual's co-worker testified that he worked with the individual

between 2000 and about 2006, that he shared an office with her for several years, and considers her a friend. He stated that the individual is a sociable person and a hard worker. He stated that he had some days when she was stressed out with things going on in her life, but that he never had any concerns about her mental condition. TR at 92-100.

2. The Individual's February 2008 Self-harm Incident and Her Hospitalization

The individual testified that in December 2007, she started to take the prescription medication, Chantix, to help with cessation of tobacco. She submitted a medical expenses summary from her pharmacy which shows that the pharmacy filled a prescription for a "Chantix Starter Pak" for her on December 4, 2007, and that the pharmacy refilled this prescription on January 4, 2008. *Id.* The individual testified that she used the medication as directed, and that she continued to use Chantix to within a couple of weeks of her February 21, 2008, hospitalization. TR at 34.[4] She stated that she did not know at the time that Chantix carried a warning that it could induce serious neuropsychiatric symptoms, including agitation, depression, suicidal thoughts, and actual suicidal behavior. *Id.* At the hearing, the individual submitted a July 1, 2009, U.S. Food and Drug Administration (FDA) announcement that Chantix would be required to carry a boxed warning highlighting the risk of serious mental health events including depressed mood, hostility, and suicidal thoughts when taking the drug. The FDA announcement states that in many cases, these problems began shortly after starting the medication and ended when the medication stopped. The FDA announcement also noted that, in some cases the symptoms continued after stopping the medication, and in a few cases the problems began after the medication was stopped. *See* Ind. Ex. 4. Both the individual's doctor and her Evaluating Psychologist stated in written submissions that they believe that the individual's use of Chantix may have influenced the individual's isolated instance of self-harm on February 21, 2008. Evaluating Psychologist's Report at 3, 7; Doctor's August 2009 letter at 1.

With regard to her February 21, 2008, incident of self-harm, the individual testified that there were a lot of things going on in her life, and that evening they all came into her mind together. She stated that her home mortgage foreclosure was turning into a bankruptcy, and that she and her live-in boyfriend were in the process of trying to cut off their relationship. She stated that she had an argument with her teenage sons, and they left the house. She testified that she started thinking about hurting herself to attract attention, and she does not understand why this happened, because she has never had such thoughts before or since. She then went on the internet and researched how she could cut her wrist without inflicting a fatal injury. She testified that she then made a poor choice to drink alcohol, and later went into the garage and slit her wrist. TR at 21-23, 86-87. When her sons came home, they saw her injury and arranged for her to be taken to the hospital emergency room. Later, she was transferred to the hospital's psychiatric ward. TR at 22. The hospital records submitted by the individual indicate that she

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[4] In later testimony, the individual indicated that she used Chantix up to the time of the February 21, 2008, hospitalization. This appears to be unlikely, as there is no record that she refilled the thirty day supply of Chantix that she received in early January 2008. *See* Pharmacy record cited above. For purposes of this proceeding, I therefore concluded that she ceased consuming Chantix approximately two weeks prior to her February 21, 2008, hospitalization.

was admitted to the hospital's "Behavior Health Center" late on Thursday evening, February 21, 2008, and spent all day Friday and part of Saturday there. Although the individual was admitted for 72 hours, she was released in less than 72 hours, which was technically AMA. However, the hospital records indicate that the Advanced Registered Nurse Practitioner (ARNP) recommended to the hospital doctor that

> If [the hospital psychiatrist] feels that she can go home, I would feel very comfortable discharging her home with a female friend supervision for the next 24 hours. We had a very long discussion regarding the event and her seeking attention through cutting her wrist. She agrees [to] outpatient counseling upon discharge and following up with her primary care doctor in one week for medication management and suture removal.

Report of ARNP at 3 attached to Individual's September 23, 2009 submission. The individual stated that the hospital psychiatrist reviewed the ARNP's report and consulted with another nurse who had treated the individual, then he told the individual that she could leave the hospital but that he wanted her to be with a friend. TR at 89-90. She testified that the hospital psychiatrist told her that she was leaving AMA, but that he would allow it. TR at 66. In light of this evidence, I find that the individual's early departure from the hospital's psychiatric ward was sanctioned by her treating physician and should not raise a concern with the DOE.

The individual stated that her act of self-harm on February 21, 2008, shocked her because she had never had such feelings before in her life. TR at 21, 39. The individual's friend/co-worker also testified that he was shocked by her February 2008 self-harm incident and thought that it was completely out of character. TR at 101. The individual's longtime friend testified that the individual has been her best friend since grade school, and now they usually meet on weekends to go shopping together. TR at 120. She stated that when the individual told her about cutting her wrist, the longtime friend thought she must be joking, "I didn't think that had actually happened." TR at 110.

3. The Individual's Treatment and Mental Health Since February 2008

The individual testified that after her hospitalization, she consulted her doctor to locate a therapist. Her doctor recommended a licensed clinical social worker (the individual's counselor), who the individual met with on a monthly basis until the counselor discharged her. TR at 37-38, 82, *see also*, Doctor's August 2009 letter attached to Individual's September 14, 2009 submission. In a September 2009 letter, the counselor states that she first met with the individual three days after she left the hospital, and at the time she presented with Generalized Anxiety Disorder and Depressive Disorder, Not Otherwise Specified. The counselor wrote that she provided counseling services to the individual from February through July 2008, during which time the individual's anxiety and depression decreased as she learned and utilized coping skills. The counselor wrote that in August 2009, the individual contacted her and asked for a reevaluation. The counselor concluded that the individual did not meet the criteria for Generalized Anxiety Disorder and Depressive Disorder, that the individual reported that she continues to utilized coping strategies introduced in their sessions, and that she has not used anti-

anxiety or anti-depressant medication since January 2009. *See* Counselor's letter attached to Individual's September 14, 2009, submission.[5]

The individual testified that very soon after she began counseling in February 2008, she ended her relationship with her ex-boyfriend, because he was not emotionally supportive. TR at 23, 77. She met her current boyfriend about a month later, and they have been living together since about January 2009. She stated that she and her boyfriend prefer to stay home and play cards rather than to go out and socialize, and that they enjoy engaging in hobby projects together. TR at 79. The individual testified that in dealing with conflicts with her sons, she'll "take a breather" rather than react immediately to negative situations. TR at 80. She stated that she believes that her sons talk to her more and listen to her more than they did prior to her 2008 hospitalization. TR at 76. She testified that before her 2008 hospitalization, she sometimes drank beer to relieve stress or to help her fall asleep, but that she now avoids alcohol when she is feeling stressed or in a bad mood. She testified that she continues to consume alcohol occasionally, but that she has not been intoxicated since February 21, 2008. TR at 54-55.

The individual's boyfriend testified that he has known the individual since March 2008 and has lived with the individual for about a year, and that he has no concerns about her mental condition, and has observed nothing that suggests that she has any tendency to want to harm herself. TR at 131. He stated that the individual told him about each meeting with her counselor, and he opined that she is a stronger person because of the coping skills she acquired in counseling. TR at 133-134. He testified that the individual has an outstanding relationship with her children. TR at 139. He stated that the individual's consumption of alcohol is very limited, and that he has never seen her intoxicated. TR at 134-135. The individual's longtime friend stated that the individual has not appeared overly stressed since her February 2008 hospitalization. TR at 117.

4. Opinions of Medical Experts Concerning the Individual's Mental Health and Prognosis

The individual's Evaluating Psychologist testified that she evaluated the individual in October 2009, and that the evaluation consisted of a structured clinical interview and several different forms of objective testing, including the Minnesota Multiphasic Personality Inventory - Second Edition and the Michigan Alcohol Screening Test. She stated that she also reviewed the DOE-consultant Psychologist's report and the LSO's Notification Letter. TR at 145-152. She testified that she concluded from her evaluation that the individual currently met no criteria for a mental health disorder, and she stated that the testimony that she heard at the hearing did not cause her to

[5] At the October 27, 2009, telephone conference call in this proceeding, I suggested to the individual's counsel that he present the testimony of the individual's doctor and her counselor, so that they could answer questions concerning the opinions that they present in the letters that they have submitted on the individual's behalf. *See* Hearing Officer's October 27, 2009, e-mail to the parties reviewing the content of the October 27, 2009, telephone conference call. Because the individual's doctor and her counselor did not testify, I can only accord their written statements neutral weight in this proceeding.

change that conclusion. Tr at 148. The Evaluating Psychologist stated that at the time of her act of self-harm and her hospitalization, the individual suffered from an adjustment disorder, which occurs when a major stressful event in life or a series of more or less stressful events that have a cumulative effect overwhelms the person's ability to cope. This results in emotional distress and impairment of functioning. TR at 154. The Evaluating Psychologist stated that the letter from the individual's counselor indicated that the individual had developed coping skills and an ability to cope with stressors. TR at 158-159. The Evaluating Psychologist stated that, in her report, she recommended that the individual engage in some form of outpatient psychotherapy as a prophylactic measure to ensure that she would continue progress or maintain her gains in coping with stress, but that such treatment was not necessary for maintaining her judgment and reliability. TR at 160. In her October 2009 Evaluation, the Evaluating Psychologist opined that the individual has certain personality traits, such as strong need for social interaction which can result at times in emotional dependence in intimate relationships, and a tendency to underestimate the degree of a problem and to recognize it at a more manageable stage. Evaluation at 5. However, she wrote that it would be inaccurate and unfair to attribute the individual's single act of self-harm on February 21, 2008, solely to these personality traits. She found that the individual's isolated act occurred on a night when both "alcohol as well as a prescription medication known to produce erratic suicidal behaviors had been consumed." Evaluation at 7. She testified that the individual has no intrinsic mental health condition that could be exacerbated by stress. However, she stated that without the active use of coping skills and without the maintenance or increases in those gains, the individual could become emotionally overwhelmed by a future stressful event. TR at 172. The Evaluating Psychologist opined that the individual currently is at low risk for a future incident similar to what happened in February 2008, but added that it would be an even lower risk if the individual obtained additional therapy to observe and monitor her emotions, and to maintain the gains that she has already made. TR at 182.

After listening to the other testimony at the hearing, the DOE-consultant Psychologist testified that he remains confident of the accuracy of his diagnosis of Major Depression Recurrent Moderate, and that the individual has characterological deficits that cause her to deny and externalize her emotional distress. TR at 202. He stated that the individual's admission that she has felt overwhelmed by a series of stressful events in her life supports his diagnosis of recurrent moderate depression. TR at 210. He testified that the individual has characterological vulnerabilities that make her susceptible to recurrent depression, and therefore her depression in not in remission. With regard to those vulnerabilities, he referred to numerous problematic choices made by the individual that have led to financial problems and relational problems. TR at 200-201. He opined that he did not believe that her February 2008 self-harm incident was suicidal or indicated a risk of suicidal episodes in the future. TR at 227. He stated that he believed her poor judgment in cutting herself for attention was not caused by a reaction to taking Chantix, but from being emotionally overwhelmed and increasingly frustrated, depressed and furious with her children. TR at 224-226.[6] However, he believed that she was at risk for being

[6] The DOE-consultant Psychologist stated that it was possible that Chantix may have (continued...)

emotionally vulnerable to the point where she can act with poor judgment. TR at 227. While he believed that the individual's acquisition of coping skills from her counselor was a good start, he characterizes it as necessary but not sufficient. TR at 228. He stated that the counselor's August 2009 letter does not indicate that she fully understands the issues that cause the individual's problems, and he does not know if she has the training and sophistication to address them. TR at 229. He stated that there is a distinction between coping techniques and addressing character and personality change. He opined that if someone is constantly feeling underappreciated and their self-esteem is rising and falling with every breath, a therapist needs to look at that individual's treatment of others as "self-esteem appliances" and help them to understand their basic personality problem. TR at 232-233. The DOE-consultant Psychologist testified that the individual is not currently in emotional distress. However, he stated that she would be at low risk for acting unreliably in the future only if she enters into psychotherapy to address the personality issues that make her emotionally vulnerable. TR at 233-234.

5. The Individual's Current Mental Condition and her Risk of Exercising Poor Judgment in the Future

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual has been properly diagnosed with a mental condition. *See* 10 C.F.R.§ 710.27. Hearing Officers properly give deference to the expert opinions of psychologists and other mental health professionals regarding these diagnoses. *See, e.g., Personnel Security Hearing*, Case No. TSO-0401 (2006). In cases like this one, where the medical experts disagree concerning a mental illness diagnosis, the DOE Hearing Officer must make a determination based on the available evidence.

The individual believes that the coping mechanisms acquired during her 2008 counseling coupled with the support of her boyfriend, other friends, and her doctor will enable her to react to any future emotional stresses with good judgment, and that she has adequately addressed the Criterion H security concerns arising from her mental diagnosis and her February 2008 act of self-harm. I find that the evidence supports the individual's assertions that her relationships with her current boyfriend and her children now are more stable and less stress-inducing than the relationships with her former boyfriend and her children that existed in February 2008, and that the coping mechanisms that she is applying in her relations with her children are enhancing those relationships. In addition, I find that the record established in this proceeding indicates that the individual has been compliant with the advice of her treating physicians, and that her 2008 act of self-harm was not suicidal in nature, and does not indicate a higher degree of risk for suicidal actions in the future. However, based on expert medical opinion expressed in this proceeding, I conclude that the individual's arguments and supporting evidence concerning her treatment program do not resolve the DOE's security concern that she is at risk for committing future acts of poor judgment.

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[6](...continued)
enhanced her agitation and acting out behavior, but that he is not an expert on these medications and cannot opine on how they can contribute to the intensity of the reaction. TR at 224-225.

At the hearing, the DOE-consultant Psychologist concluded that the individual still appeared to be vulnerable to recurrent instances of moderate depression, and that her counseling had not provided her with the insight and support to address the emotional issues that could lead to stress induced instances of poor judgment in the future. The individual's Evaluating Psychologist disagreed with the DOE-consultant Psychologist's diagnosis and argued that the individual's 2008 incident of self-harm was an isolated adjustment disorder episode brought on by a high level of emotional stress and the presence of both alcohol and the possible influence of a medication that can produce mental instability. In this instance, I find that the record provides stronger support for the DOE-consultant Psychologist's position that the individual suffers from a recurrent depression which requires additional psychological treatment. I find that this diagnosis is supported by individual's testimony that she continued using an anti-depressant from 2002 until 2008 because she felt an ongoing need for medication to help her cope with a series of problems in her life. I also find that the individual's argument with her children that precipitated her February 21, 2008, act of self-harm does not in itself appear to be the type of major, stressful life event that would trigger the adjustment disorder diagnosed by the Evaluating Psychologist. Nor do I find that the Evaluating Psychologist has established a strong likelihood that the individual's acts of poor judgment on February 21, 2008, were caused or enhanced by a reaction to the medication Chantix. The individual testified that she experienced no problems with Chantix while she was consuming it, and that she stopped consuming Chantix prior to the February 21, 2008, incident. The FDA notice provided by the individual indicates that in only a few cases did side effects occur only after Chantix was discontinued. I therefore conclude that the possibility that Chantix negatively influenced the individual's actions on February 21, 2008, is not substantiated and does not mitigate the LSO's concerns about her poor judgement. *See Personnel Security Hearing*, Case No. TSO-0770 (2010) (OHA Hearing Officer found that the possible effects of Chantix in worsening an individual's alcohol-induced behavior did not invalidate the DOE-consultant psychologist's diagnosis of Alcohol Dependence).

My positive assessment of the individual's demeanor and of the evidence presented at the hearing convince me that the individual has committed herself to dealing with emotional stress in a productive manner. Moreover, she testified that she will follow the Evaluating Psychologist's advice to engage in psychotherapy. TR at 81. These positive developments are all significant factors which indicate progress towards mitigating the security concerns arising from her diagnosed mental condition and her February 2008 incident of self-harm. However, I agree with the DOE-consultant Psychologist that the individual has not yet established an ongoing psychotherapeutic relationship that will permit her to address her emotional issues and vulnerabilities.

Accordingly, I find that the individual has not yet progressed in her treatment to the extent necessary to resolve the DOE's security concerns. I therefore conclude that it would not be appropriate to restore the individual's access authorization at this time.

IV. CONCLUSION

For the reasons set forth above, I find that the individual was properly diagnosed with Major Depression Recurrent Moderate, and that this mental condition is subject to Criterion H. Further,

I find that this derogatory information under Criterion H has not been mitigated sufficiently at this time. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not yet demonstrated that restoring her access authorization would not endanger the common defense and would be clearly consistent with the national interest. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: February 2, 2010